

Minutes of the March 26, 2010 Regular Council Meeting

Call to Order and Flag Salute at 3:30 pm by Mayor Serio.

Council in Attendance: Weistling, Serio, Carmean, Bunting and Smallwood

Excused Absence: Tingle and Langan

Topics for Discussion and Possible Action

a. Facebook Page for Old Fenwick Island Photos – Council Member Smallwood and Greg Hughes, State of DE

Council Member Smallwood introduced the topic explaining that the Planning Commission, on behalf of the Cultural and Historic Preservation Sub-committee, has requested that Town Council approve establishing a Facebook Page to accommodate the Old Fenwick Island Photos that they are collecting. Mr. Hughes gave a PowerPoint® Presentation that explained social media and their applications and usefulness to the Town in presenting Town business. A question and answer period followed:

- Council Member Smallwood reiterated that this would be used as a repository of Old Fenwick Island photos and added that content control might be an issue. Mr. Hughes noted that the State of Delaware uses Facebook in a variety of ways and that the site can be configured so that no links, other than official links, can be attached. The State does monitor the site for violations of its guidelines and that there exists a “Tab” which explains the terms of use and guidelines the State follows. He also noted that the type of content put out tends to control the type of comments added.
- Council Member Carmean asked if it isn’t more advantageous to use the Town web site for this information; Mr. Hughes explained that Facebook could be used to attract more participation in government and its projects. Council Member Carmean asked if permission of the owner is required before posting a photo to the digital archive. Mr. Hughes advised that the Town would need permission to use the photo and that the submission of a photo may be implied consent.
- Council Member Smallwood advised that a “fan” can see what’s posted on the Facebook page but questioned if it is possible to block items posted to the “wall.” Mr. Hughes advised that there are controls that might be put in place but that the site will need to be monitored. He advised that there is a current Facebook page purporting to be the “official” Town of Fenwick Island Facebook page and that it might be advisable to report to the Facebook company the use of the term “official” as it applies to this page.
- Buzz Henifin asked the amount of time and training that is required to set up, maintain and monitor the Facebook page. Mr. Hughes responded that there is no real training required and that the initial time investment is approximately one hour and then a few minutes a day to monitor it. Mike Quinn asked if the town would designate someone to monitor the site and Mr. Hughes advised that the town should have a primary and a secondary contact. He added that his department has several publications that are available for state agencies interested in web-based programs.

Mr. Hughes’ presentation ended at 3:55 PM. Council continued discussion.

- Council Member Smallwood noted that he believes that Facebook is suited to the Cultural & Historic Preservation Sub-committee’s idea for posting photos and supported a trial run. He has concerns about outside postings to the “wall.”
- Mike Quinn asked if the town intended to hire a staffer to monitor the Facebook page; Mayor Serio responded that it did not. Council Member Smallwood added that using Facebook is easy and is one of the best places on the internet to share photos.
- Buzz Henifin asked if it is possible to identify who is posting to the Facebook page. Council Member Smallwood noted that anyone can use an alias when posting and so it might not be possible to identify all posters. Vicky Rymer questioned if there is any way to have one-way communication only; Council Member Smallwood thought that it might be advisable to not have fans and leave the content open for viewing only. Greg Hughes indicated that the point of Facebook usually is for 2-way communication but that it might be possible to restrict postings to the page.
- Mary Pat Kyle expressed concern that people are not interested in viewing old photos; Town Manager Abbott advised that CivicPlus has a plug-in feature that the Town can use to create and manage a Facebook page.

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- Buzz Henifin expressed concern that those who post to the page will not identify themselves and create inappropriate materials. Vicky Rymer expressed concern about legal liability. Greg Hughes noted that the State of Delaware archives all postings for FOIA purposes; when a posting violates guidelines they remove it. He advised that most of the removed content can be classified as spam.
- Council Member Weistling suggested a trial run and, if there are any problems, it can be shut down.
- Mayor Serio noted that there is no need for Council action on this item. Discussion ended.

b. Resolution #42-2010 Re-naming of W. Essex Street Ext to be named Ebb Tide Cove – Council Member Carmean

Council Member Carmean read into the record Resolution #42-2010. Council Member Carmean thanked Mrs. Peg Baunchalk who was instrumental in working with all residents concerned to reach a consensus.

Motion to accept Resolution #42-2010 – Council Member Carmean

Second: Council Member Bunting

Discussion – None

Vote: All in favor (5-0)

Resolution #42-210 passed.

c. Banner Display for Warren's Station – Council member Weistling

Scott Mumford has requested permission to display a banner on Warren's Station roof to celebrate 50 years in business.

Motion to approve banner display – Council Member Weistling

Second – Council Member Carmean

Discussion: Building Official, Pat Schuchman, explained that the banner would be placed on the roof of the building between two dormers and on display from Mother's Day to the third weekend in September. Council Member Smallwood noted that this has been done at other businesses; Mayor Serio added that the Cultural and Historic Preservation Sub-committee is featuring past and present businesses as its focus and approving the banner will go hand-in-hand with what the town believes is an important aspect of Fenwick Island. Council Member Carmean agreed; Council Member Bunting noted that Warren's may be the second oldest existing business within the corporate limits.

Vote: All in favor (5-0)

Motion to approve banner display passed.

Approval of Minutes:

Motion to Approve the Minutes of February 26, 2010 Meeting - Council Member Carmean

Second: Council Member Smallwood

Discussion: None

Vote: All in favor (5-0)

Minutes Approved

Treasurer's Report:

Council Member Bunting noted that the financial report is included in the council meeting packet. The Budget Committee has held meetings to discuss investment strategy. The Town should re-allocate some funds and will do so in the future. A recent change should result in an increased return of eleven times over current receipts. The Town also will invest in other funds in the future in various other financial institutions.

Discussion: Council Member Carmean noted that this is a time-consuming process but one that is worth the effort.

Motion to Accept the Treasurer's Report - Council Member Carmean

Second - Council Member Smallwood

Vote: All in favor (5-0)

Treasurer's Report Approved

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Town Manager Report:

- Town Manager Abbott reported that the Treasurer's Report is available for review as well as a recent review of expenses.
- Recycling of yard waste – if less than 10% of the bulk of the trash is yard waste, then the Town trash hauler should be able to accept it.
- Public Works has measured the beach and found no real gain/loss; dune grass planting was held on March 20, 2010.

Department Reports:

- Beach Patrol –Town Manager Abbott reported that twenty-six guards and a captain will be hired for this season. The State of Delaware and Sussex County both have committed to supplementary funding.
- Building Official – Report is included in the council packet. Pat Schuchman reported that appraisers will be in Town Hall May 5-6, 2010. They review all prior year (May-April) building permits and assess/re-assess based on those changes.
- Public Works: Report is included in the council packet.
- Fenwick Island Police Department: Report included in the council packet.

Committee Reports:

- Beach Committee –No report.
- Environmental Committee –Council Member Carmean reported Council Member Smallwood and Sally Boswell (Center for the Inland Bays) gave a presentation at the last meeting. Follow up information will be presented by Buzz Henifin at the April 13, 2010 meeting. Mrs. Carmean commended John Belian for his hard work in organizing volunteers for the dune grass planting. Rain barrels are available.

Planning Commission: Report included in Council book.

Charter & Ordinance:

- Council Member Weistling introduced a First Reading of Chapter 112 Parking (included at the end of these minutes).
Motion to accept – Council Member Weistling
Council Member Carmean seconded.
DISCUSSION: Council Member Weistling noted that the majority of the changes pertain to misspellings.
Vote: All in favor (5-0)
First Reading of Chapter 112 Parking Approved.
- Council Member Weistling introduced a First Reading of Chapter 120 Property Maintenance (included at the end of these minutes).
Motion to accept – Council Member Weistling
Council Member Carmean seconded.
DISCUSSION: Council Member Weistling noted that the fine is increased to \$500 and section 120-1b(2) is deleted. Mayor Serio asked what time frame is used before the Town will effect a clean up of property. Building Official Schuchman explained that it is ten days from the date of the letter from her department notifying the property owner of the pending action. Mrs. Schuchman's first notice to the property owner is in the form of a non-threatening postcard reminding him/her that the property needs attention. If the property owner ignores the postcard, Mrs. Schuchman sends a letter advising of the need for attention and of the Town's intention to proceed as per ordinance. The letter is sent both by regular US Mail and by Certified/Return Receipt US Mail. Council Member Carmean asked if any leeway is given in the event of bad weather; Building Official Schuchman noted that the Town is flexible and understanding in this regard. The Code has been enforced twice this past year. Council Member Smallwood noted that in the most recent incident the Public Works Department expended 1 ½ days on the property.
Vote: All in favor (5-0)
First Reading of Chapter 120 Property Management Approved.

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- Council Member Weistling introduced a First Reading of Chapter 116 Peace and Good Order (included at the end of these minutes).
Motion to accept – Council Member Weistling
Council Member Carmean seconded.
DISCUSSION: Council Member Weistling that the proposed changes involve minor changes in wording and the inclusion of time of day and court costs.
Vote: All in favor (5-0)
First Reading of Chapter 116 Peace and Good Order Approved.
- Council Member Weistling introduced a Second Reading of Chapter 77 Disorderly Conduct (included at the end of these minutes) and asked Council to delete the existing Chapter 77 Disorderly Conduct and replace it with the proposed document.
Motion to adopt – Council Member Weistling
Council Member Carmean seconded.
DISCUSSION: Council Member Weistling advised that this change came about from Chief Boyden's request to update and clarify Code regarding Disorderly Conduct. The Charter and Ordinance Committee reviewed Chief's recommendations which were based on the Town of Bethany Beach Ordinance. The document has been reviewed by the Town Solicitor.
Vote: Smallwood – aye; Carmean – aye; Serio – aye; Bunting – aye; Weistling – aye
Vote to accept the Second Reading of Chapter 77 Disorderly Conduct: All in Favor.
Second Reading passed (5-0)
- Council Member Weistling motioned to accept a Second Reading of Chapter 107 - Noise (included at the end of these minutes)
Motion to adopt – Council Member Weistling
Council Member Carmean seconded.
DISCUSSION: Council Member Weistling noted that the proposed change deletes in its entirety the current Chapter 107 – Noise replacing it with new language. This change clarifies verbiage and terms and outlines specific fines for violations. He noted that the change attempts to address commercial equipment noise in §117-5 noting that any complaints of noise should be documented by a certified outside source. Council Member Carmean asked what action would be taken if noise is obvious and unbearable; Council Member Weistling advised that if the noise is extreme enough as to be obvious, the Town may address it. Building Official Schuchman advised that the ordinance addresses such noise by noting that independent outside verification would not be necessary if equipment is not in proper working order.
Vote: Smallwood – aye; Carmean – aye; Serio – aye; Bunting – aye; Weistling – aye
Vote to accept the Second Reading of Chapter 107 - Noise: All in Favor.
Second Reading passed (5-0)

Old Business:

- None

New Business – No Action to be Taken:

- None

Public Participation:

- Buzz Henifin (48 Windward Way) –advised that those who have an address change should be alert and verify that the agency they've notified has made the correct change. Mr. Henifin was unhappy that there did not appear to be a monthly Police Department report in his meeting packet. Mr. Henifin was dissatisfied with the amount of information made available to the citizens and wondered if more information would be available if the Town uses Facebook. Council Member Smallwood advised that the Police Department cannot share information for on-going investigations. Council Member Carmean expressed her belief that citizens need to be warned if houses

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are being broken into; Council Member Bunting added that a simple statement that something is happening is a good thing.

- Mary Pat Kyle (1205 Bunting Ave) – agreed with Mr. Henifin. Mayor Serio will explore with Chief Boyden ways of disseminating information. Council Member Carmean advised that Nixle notification is a good tool and asked that the Police Department utilize the Town web site better.
- Lynn Andrews (1205 Schulz Rd) – advised that two Saturdays ago a group was going around town and onto all properties. This group indicated that it was conducting a search for Greg Forte who went missing recently. Mrs. Andrews expressed her belief that they were trespassing and that she should have been notified that the group would be canvassing town. Council Member Smallwood advised that he received notification through Nixle; Mayor Serio suggested that everyone get on the system. Council Member Bunting added that this group was led by private investigators and that, if they were on private property without permission, it might be an issue. Mayor Serio asked for understanding from the citizens in dealing with the situation.
- Lynn Andrews (1205 Schulz Rd) – asked if the town would publicize the FISH Annual Dinner Meeting 4/17/2010 at 5:30 PM
- Marlene Quinn (5 W Houston St) – advised that if a group of people conducts a search it might be advisable, if there are vehicles in the drive, for them to knock on the door and let residents know what is going on.
- Mike Quinn (5 W Houston St) – thanked the Public Works Department for doing a good job during the recent snow storm and for replacing the missing street signs.

President's Report:

- Mayor Serio presented a certificate to Town Clerk, Agnes DiPietrantonio, given by the University of Delaware Institute for Public Administration for completion of 24 hours of course study.
- Mayor Serio thanked all who helped with the dune grass planting.
- Mayor Serio advised that she attended an ambulance meeting and that solicitation letters will be mailed out shortly to those not participating. The Ambulance Financial Report was accepted by those in attendance.
- The Committee for the Public Safety Building will advertize bids for architectural services.
- Mayor Serio noted that those council members not in attendance today have been excused from attendance due to family circumstances.
- Mayor Serio made note of upcoming meetings. The Beach Committee will meet on 4/10/2010 at 8:30 AM. This was not included on the original agenda.

Motion to Adjourn: Council Member Bunting

Second: Council Member Carmean

All in favor Motion passed (5-0)

Mayor Serio adjourned the meeting at 5:00 PM.

Respectfully submitted,

Agnes DiPietrantonio, Town Clerk

For Diane Tingle, Secretary

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NOTICE

On March 26, 2010 The Fenwick Island Town Council
Passed the Following Resolution #42-2010

Whereas, it has been determined that in order to better serve the health, safety and welfare of the citizens of Sussex County that it be necessary to adopt an ordinance establishing standards for naming roadways, posting street signs and assigning numbers to all dwellings and businesses that will assist emergency services, the United States Postal Service the public in the timely and efficient provision of services to these residents and business; and

Whereas, the Town of Fenwick Island did, on October 24, 2008, resolve to enlist the services of the Sussex County Mapping and Addressing Departments to assist in re-addressing and re-naming streets within the Town limits that have been identified as areas of concern for Public Safety ; and

Whereas, the street currently named West Essex Street Extension, has been found to be an area of concern; and, through outreach to its citizens, have found names that meet County standards and that are acceptable to residents.

Therefore, the Town Council, of the Town of Fenwick Island, on behalf of the citizens and property owners of The Town of Fenwick Island, in order to accomplish this goal, do hereby establish the following name for this street: Ebb Tide Cove.

Attest: _____
Agnes D. DiPietrantonio, Town Clerk

Audrey Serio, President of Council

Diane B. Tingle, Council Secretary

I, Diane B. Tingle, Secretary of the Town Council, of the Town of Fenwick Island, Delaware, do hereby certify that the foregoing is a true and correct copy of the Resolution passed by the President and Council at a meeting on March 26, 2010, at which a quorum was present and voting throughout and the same is still in force and effect.

Date

Diane B. Tingle, Council Secretary

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EXISTING – (CHAPTER 112 – PARKING):

§112-5. Determination of Council; issuance of permits.

G. All parking on Town sheets and beach ends, including handicapped spaces, require permits from May 15 through September 15. Such permit shall be visually displayed hanging from the rearview mirror in the vehicle so that it is able to be readily seen from the street. Duplications or reproductions of such permits are not valid. The fees for such permits shall be as set by resolution of the Town Council from time to time.

§ 112-6. Parking for handicapped persons.

A. No person shall park, stop or stand a vehicle at any time upon any of the streets or parts of streets designated in § 112-7, except a vehicle for which a special plate has been issued pursuant to 21 Del. C. § 2134 or for which an authorized identification card has been issued by the Director of the Division of Motor Vehicles and displayed in the front window of such vehicle. Any vehicle operated by a handicapped person and for which a special plate or authorized identification tag has been issued shall be permitted to park 90 minutes longer than the legal parking period unless such vehicle is clearly a traffic hazard.

B. Handicapped parking and signage for persons with disabilities:...

(4) For purposes of this section, "conspicuously marked" means that a vertical sign has been placed at an approximate height of at least five feet but no more than seven feet when measured from the surface directly below the sign to the top of the sign for each parking space or zone. The sign shall comply with federal specifications for the identification of a parking zone or space of persons with disabilities which limit or impair ability to walk. A sign at least 12 inches wide (horizontal) by 18 inches tall (vertical) that includes the internationally recognized wheelchair symbol of access shall be required for each parking space or zone for persons with disabilities which limit or impair the ability to walk. These requirements may not be constructed to preclude additional markings, such as the international wheelchair symbol or a striped extension area painted on the space or zone, or a tow-away warning sign.

PROPOSED:

§112-5G Correct typographical error from "sheets" to "streets".

§ 112-6. Parking for handicapped persons.

A. No person shall park, stop or stand a vehicle at any time upon any of the streets or parts of streets designated in § 112-7, except a vehicle for which a special plate has been issued pursuant to 21 Del. C. § 2134 or for which an authorized identification card has been issued by the Director of the Division of Motor Vehicles and displayed in the front window of such vehicle.

§112-6B(4) Correct typographical error from "been" to "been".

EXISTING – (CHAPTER 120 – PROPERTY MAINTENANCE):

§ 120-1. Weeds and grass.

B. Each owner shall be required to cut the weeds and grass on his lot(s) and remove rubbish which may accumulate thereon. The predominant height of grass and/or weeds shall not exceed 10 inches. All areas shall be maintained so that no grass and/or weeds are allowed to grow in any area that is not an established lawn. [Amended 4-27-2007]

(1) All lots west of Del. Route 1 shall be required to be maintained. All lots east of Del. Route 1 which have been planted with commercial grass to establish a lawn, shall be required to be cut.

(2) Other lots east of Del. Route 1 shall not be required to be cut because the natural vegetation helps prevent sand erosion, and helps stabilize the soil. The sandy nature of the soil minimizes the mosquito problem.

§ 120-3. Failure to comply with notice.

In the event the owner fails to comply with such notice within the time set forth, he shall be deemed to be guilty of maintaining a nuisance and/or unsanitary condition. Therefore, the Town of Fenwick Island shall have:

B. As to a violation of § 120-1B, the authority (be empowered) to have the Public Works Department clear the property of weeds, high grass and any trash thereon. The fee for the service shall be \$250 for each time it is performed and shall be charged to the owner(s) of the lot(s).

PROPOSED:

Delete: Chapter 120-1B(2)

Amend: § 120-3. Failure to comply with notice.

B. As to a violation of § 120-1B, the authority (be empowered) to have the Public Works Department clear the property of weeds, high grass and any trash thereon. The fee for the service shall be \$500 for each time it is performed and shall be charged to the owner(s) of the lot(s).

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EXISTING – (CHAPTER 116 – PEACE AND GOOD ORDER):

§ 116-3. Sleeping on public beaches.

It shall be unlawful for any person to sleep, lie or loiter on, or occupy as a sleeping quarter or under the guise of pretending to sleep, on any part of the public beaches within the corporate limits of the Town of Fenwick Island, Delaware, between 12:00 midnight and 8:00 a.m. local time.

§ 116-5. Tailgating.

It shall be unlawful for any person to tailgate from any vehicle or picnic on any street or highway within the corporate limits of the Town of Fenwick Island, Delaware. For the purposes of this chapter, "tailgating" shall mean standing or sitting and eating or drinking on any street or highway and using the vehicle as a picnic facility.

§ 116-6. Occupancy of vehicles during certain hours.

It shall be unlawful for any person to occupy any vehicle parked on any street or any parking area generally available to the public within the corporate limits of the Town of Fenwick Island, Delaware, between the hours of 2:00 a.m. and 6:00 a.m.

§ 116-7. Violations and penalties.

Any person violating any provision of this chapter, upon conviction thereof before the Alderman of the Town of Fenwick Island, Delaware, shall be fined fifty dollars (\$50.) and costs for each and every offense.

PROPOSED:

§ 116-3. Sleeping on public beaches.

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§ 116-7. Violations and penalties.

Any person violating any provision of this chapter shall, upon conviction, be fined fifty dollars (\$50.) plus Court costs for each and every offense.

PROPOSED:

Chapter 77. DISORDERLY CONDUCT

§ 77-1. Definitions; Word Usage.

For the purposes of this Chapter, the following terms, phrases, words and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular and words in the singular number include the plural. The word "shall" is always mandatory and not merely directory.

TOWN - The Town of Fenwick Island, Delaware, with administrative offices at 800 Coastal Highway, Fenwick Island, Delaware 19944.

EMERGENCY - An unforeseen combination of circumstances or the resulting state that calls for immediate action. The term includes, but is not limited to, a fire, natural disaster or automobile accident or any situation requiring immediate action to prevent serious bodily injury or loss of life.

JUVENILE OR MINOR - Any unemancipated person under the age of 18 or, in equivalent phrasing often herein employed, any person 17 or less years of age.

PARENT - Any person having legal custody of a juvenile as a natural or adoptive parent, as a legal guardian, as a person who stands in loco parentis or as a person to whom legal custody has been given by court order.

PERSON -- Includes firms, companies, corporations, partnerships, associations or any organization entity as well as individuals.

PUBLIC PLACE - Any place to which the public or a substantial group of the public has access and includes, but is not limited to, the public beach, jetties, wharfs, docks, boardwalk, streets, alleys, sidewalks, parking lots, common areas of churches and condominiums, restaurants, shops, cafes, arcades and similar areas that are open to the use of the public. As a type of "public place," a street is a way or place, of whatever nature, open to the use of the public as a matter of right for purposes of vehicular travel or for pedestrian travel. "Street" includes that legal right-of-way, including but not limited to the cartway of traffic lanes, the curb, the sidewalks, whether paved or unpaved, and any grass plots or other grounds found within the legal right-of-way of a street.

REMAIN - To loiter, idle, wander, stroll, play, stay behind, tarry or stay unnecessarily in a public place, including the congregating of groups (or of interacting minors) totaling four or more persons in which any juvenile involved would not be using the streets for ordinary or serious purposes such as mere passage or going home, or to fail to leave the premises of an establishment when requested to do so by a police officer or the operator of an establishment. To implement this provision with additional precision and precaution, numerous exceptions are expressly defined in this Chapter.

TIME OF NIGHT - As referred to herein is based upon the prevailing standard of time, whether Eastern Standard Time or Eastern Daylight Saving Time, generally observed at that hour by the public in the Town.

YEARS OF AGE - Continues from one birthday, such as the seventeenth to (but not including the day of) the next, such as the eighteenth birthday, making it clear that 17 or less years of age is herein treated as equivalent to phrase "under 18 years of age."

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ARTICLE I **Exposure in Public**

§ 77-2. Urinating in public.

No person shall urinate or defecate in any public place or in any place on private property not designed for the disposal of human waste in the Town of Fenwick Island, Delaware.

§ 77-3. Disrobing in public.

No person shall disrobe or change his clothing from bathing suit to street clothes or otherwise in any motor vehicle, in any public place or in any place not enclosed from the view of others in the Town of Fenwick Island, Delaware.

§ 77-4. Engaging in sexual acts in public.

No person shall engage in sexual intercourse or any immoral acts in any motor vehicle in any public place or in any place not enclosed from the view of others in the Town of Fenwick Island, Delaware.

§ 77-5. Violations and penalties.

Any person found guilty of violating any of the provisions of this Article shall, upon conviction thereof, be subject to a fine of \$200. Each day that a person continues to violate the provisions of this Article shall be deemed a separate offense.

ARTICLE II **Disorderly Conduct**

§ 77-6. A person may be found guilty of disorderly conduct when:

- A. The behavior intentionally causes public inconvenience, annoyance or alarm to any other person or creates a risk thereof by:
 - (1) Engaging in fighting or in violent, tumultuous or threatening behavior;
 - (2) Making an unreasonable noise or an offensively coarse utterance, gesture or display or addressing abusive language to any person present;
 - (3) Disturbing any lawful assembly or meeting of persons without lawful authority;
 - (4) Obstructing vehicular or pedestrian traffic;
 - (5) Congregating with other persons in a public place and refusing to comply with a lawful order of the police to disperse;
 - (6) Creating a hazardous or physically offensive condition which serves no legitimate purpose; or
 - (7) Congregating with other persons in a public place while wearing masks, hoods or other garments rendering their faces unrecognizable, for the purpose of and in a manner likely to imminently subject any person to the deprivation of any rights, privileges or immunities secured by the Constitution or laws of the United States of America.

- B. The behavior results in a course of disorderly conduct, as defined in Subsection A of this section, which is likely to cause substantial harm or serious inconvenience, annoyance or alarm and refuses or knowingly fails to obey an order to disperse made by a police officer to the participants.

§ 77.7. Violations and Penalties

Any person found guilty of violating any of the provisions of this Article shall, upon conviction thereof, be subject to a fine of \$200. Each day that a person continues to violate the provisions of this Article shall be deemed a separate offense.

ARTICLE III **Disorderly Dwelling Units**

§ 77.8. Findings; purpose.

- A. The Town Council has determined that at various times, particularly during the late spring and summer, the occupants or users of some dwelling units in the Town of Fenwick Island use those dwelling units for the purpose of engaging in disorderly and disruptive conduct, loud and disturbing noises, public intoxication and other violent and tumultuous behavior. The Town Council has also determined that a number of persons in legal possession of dwelling units in the Town of Fenwick Island are engaging in the practice of allowing such dwelling units, designed for occupancy by essentially single families, to be occupied or used by groups of persons, frequently but not necessarily comprised of minors with insufficient adult supervision. The Town Council has further determined that these practices encourage incidents of disorderly conduct, loud and disturbing noises, public intoxication, violent and tumultuous behavior, disturbing the peace and other similar acts which are detrimental to the public health, safety, peace and welfare of the Town.
- B. The Town Council has further determined that the persons entitled to lawful possession of such premises who fail to take appropriate measures to prevent recurrences of such incidents after due notice of previous disturbances by persons occupying or using the premises must be held responsible for allowing such conduct to occur on those premises.
- C. It is, therefore, declared to be the purpose and intent of this Article to prohibit the use of dwelling units in the Town of Fenwick Island for disorderly and other disruptive conduct by imposing civil penalties not only upon the occupants and/or users of such premises but also by imposing civil penalties on those persons in possession of any premises in the Town who, after notice of a previous conviction for conduct proscribed by this Article, fail to take appropriate actions to prevent a subsequent violation.

§ 77.9. Unlawful acts by occupants and/or users.

Any person occupying or present on a premises who by himself or in concert with other occupants and/or users causes public inconvenience, annoyance or alarm to any other person or persons or who creates an unreasonable risk thereof by engaging in or causing any of the following conduct shall be violating this article:

- A. Making, creating or permitting any unreasonably loud, disturbing and unnecessary noise or making, creating or permitting any noise of such character, intensity or duration as to be detrimental to the life, health and welfare of any person or which disturbs, injures or endangers the comfort, repose, peace or safety of any individual. By way of example and not in limitation, the following shall be deemed to be unreasonably loud, disturbing and unnecessary noises:

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(1) Playing any radio, phonograph, tape deck or musical instrument in such a manner or at such a volume, particularly between the hours of 12:00 a.m. and 8:00 a.m., as to annoy or disturb the quiet, comfort or repose of any person in any other dwelling unit, apartment or commercial lodging room.

(2) The blowing of any horn, whistle or signal device, except as a danger signal, for an unreasonable and unnecessary period of time.

(3) Yelling, shouting or singing at such volume as to be plainly and disturbingly audible to the human ear outside the premises.

§ 77.10. Unlawful acts by persons entitled to lawful possession.

A. Any person(s) entitled to lawful possession who, after notice as herein provided, allows, permits or fails to take affirmative action to prevent repeated violations of this Article shall be deemed to be promoting the use of a dwelling unit for disorderly or other disruptive conduct in violation of this Article.

B. A person(s) in lawful possession shall be presumed to have allowed, permitted or failed to take affirmative action to prevent repeated violations of this Article where a violation of § 77-9 of this Article occurs after such person entitled to lawful possession has, within the past three months, previously been provided actual notice by the Fenwick Island Police Department of a previous conviction for conduct proscribed by § 77-9 of this Article.

C. "Actual notice," as used in Subsection B, shall mean verbal or written notice to one or more of the person(s) entitled to legal possession. If written notice is attempted, it shall be deemed effective by mailing a written notice thereof to the person entitled to lawful possession at his or her last known mailing address by certified mail, return receipt requested, with proper postage affixed. If such notice comes back undelivered (except refused), the Town shall exercise reasonable efforts to provide actual notice by some other means.

D. In the case of a single-family residential property subject to a rental license, oral and written notice of each such violation shall be given to the recorded license holder and his/her realtor within five business days. The license may be revoked if there have been three oral and written notices during a calendar year of violation of §77-9 of this chapter. Such license revocation may be immediate, or deferred to the entire rental season for the following year, or both.

§ 77.11. Violations and Penalties

Any person found guilty of violating any of the provisions of this Article shall, upon conviction thereof, be subject to a fine of \$200. Each day that a person continues to violate the provisions of this Article shall be deemed a separate offense.

ARTICLE IV Juvenile Curfew

§ 77.12. Policy.

It shall be unlawful for any person 17 years or less of age (under 18) to be or remain in or upon a public place within the Town of Fenwick Island during the period beginning at 1:00 a.m. and ending at 5:00 a.m.

§ 77.13. Exceptions.

The following shall constitute valid exceptions to the operation of this Article:

- A. Accompanied by parent. When a juvenile is accompanied by a parent of such juvenile.
- B. Accompanied by authorized adult. When a juvenile is accompanied by an adult authorized by a parent of such juvenile to take said parent's place in accompanying said juvenile for a designated period of time and purpose within a specified area.
- C. Errand directed by parent. When the juvenile is on an errand as directed by his/her parent.
- D. Emergency. When a juvenile is involved in or assisting in an emergency, including, by way of example and not in limitation, responding as a member of a volunteer fire company to a fire company or paramedic call.
- E. First Amendment rights. When a juvenile is exercising First Amendment rights protected by the United States Constitution, such as the free exercise of religion, freedom of speech and the right of assembly.
- F. Reasonable necessity. In case of reasonable necessity for the juvenile remaining in a public place but only after the juvenile's parent has communicated to the Chief of Police or the person designated by the Chief of Police to receive such notifications the facts establishing the reasonable necessity relating to a specified public place at a designated time for a described purpose, including points of origin and destination. A copy of the communication, or of the police record thereof, duly certified by the Chief of Police to be correct, with an appropriate notation of the time it was received and of the names and addresses of the parent and juvenile shall be admissible evidence.
- G. On own or neighbor's property. When a juvenile is on the sidewalk or property where the juvenile resides or on either side of or across the street from the place where the juvenile resides and the adult owner or resident of that property has given permission for the juvenile to be there.
- H. Attending and returning home within one hour of official activity. When a juvenile is attending or is returning home by a direct route (without any unnecessary stop or detour) from and within one hour of any religious, recreational or other organized activity supervised by adults, sponsored by the Town, a recognized charitable, benevolent or civic association or a similar entity that takes responsibility for the minor.
- I. Employment necessity. When the juvenile is legally employed, going to or returning home from employment.
- J. Interstate or intrastate travel. When the juvenile is, with parental consent, in a motor vehicle, engaged in normal interstate or intrastate travel through the Town or originating or terminating in the Town.
- K. Married. When the juvenile is married or has been married pursuant to state law.

§ 77.14. Town responsibility limited; parental responsibilities.

- A. The foregoing exceptions to the operation of this Article shall act only to create a waiver of enforcement and affirmative defense(s) to such enforcement. By authorizing such exceptions, neither the Town nor any member of the Police Department shall assume any affirmative obligation or duty to supervise the well-being of any juvenile acting pursuant to such authorized exception.
- B. It shall be unlawful for a parent having legal custody of a juvenile knowingly to permit or by inefficient control to allow the juvenile to remain in any Town public place under circumstances not constituting an exception to, or otherwise beyond the scope of, this Article. The term "knowingly" includes knowledge that a parent should reasonably be expected to have concerning the whereabouts of a juvenile in that parent's legal custody. This requirement is intended to hold a neglectful or careless parent up to a reasonable community standard of parental responsibility through an objective test. It shall, therefore, be no defense that a parent was completely indifferent to the activities or conduct or whereabouts of such juvenile.
- C. It shall be unlawful for any parent to "knowingly" (as defined by this Chapter) provide any false authorization, information or certification, written or verbal, to the Town Police Department in order to obtain an exception to the operation of this Article under § 77-12 hereof.

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§ 77.15. Enforcement procedures.

- A. If a police officer reasonably believes that a juvenile is in a public place in violation of this Article, the officer shall require the juvenile to provide his or her name, address and telephone number and how to contact his or her parent or guardian. No juvenile shall be issued a citation or taken into custody for a violation of this Article unless the police officer first affords that minor an opportunity to explain his or her conduct. In determining the age of the juvenile and in the absence of convincing evidence such as a birth certificate or driver's license, a police officer shall use his or her best judgment in determining age.
- B. If the police officer reasonably concludes that the juvenile is in violation of this Article, the officer may, depending upon the circumstances (e.g., age of the juvenile, hour of night, juvenile's means of transportation, juvenile's physical condition and whether parents could be reached) take the juvenile into custody pursuant to 10 Del. C. § 1004 or issue the juvenile a citation charging him or her with a violation of this Article and order the juvenile to go promptly home. If the juvenile is issued a citation, the Chief of Police shall send the parent or guardian of the juvenile written notice of the violation as set out in Subsection E hereof.
- C. Notwithstanding § 77-15 B of this Article, when a police officer has reasonable grounds to believe that the juvenile has engaged in delinquent conduct, the procedure shall then be to take the juvenile to the police station, where a parent or guardian shall immediately be notified to come for the juvenile, whereupon the parent or guardian and the juvenile shall be questioned. This is intended to permit ascertainment, under constitutional safeguards, of relevant facts and to centralize responsibility in the person designated there and then on duty for accurate, effective, fair, impartial and uniform enforcement and recording, thus making available experienced personnel and access to information and records.
- D. When a parent or guardian, immediately called, has come to take charge of the juvenile, and the appropriate information has been recorded, the juvenile shall be released to the custody of such parent. If the parent cannot be located or fails to take charge of the juvenile, then the juvenile shall be released to the juvenile authorities, except to the extent that in accordance with police regulations, approved in advance by juvenile authorities, the juvenile may temporarily be entrusted to an adult, neighbor or other person who will on behalf of a parent or guardian assume the responsibility of caring for the juvenile pending the availability or arrival of a parent or guardian.
- E. In the case of a first violation of this Article by a juvenile, the Chief of Police shall cause notice to be given to the parent of such minor. Such notice shall be given by either personal delivery thereof to the parent or by deposit of such notice in the United States mail in an envelope with postage prepaid addressed to such parent at his or her address as shown by records of the Police Department, including information obtained from the appropriate State records and/or any other identifying means. The giving of notice by mail is complete upon the expiration of four days after such deposit of such notice. Proof of the giving of notice by personal delivery or by mail may be made by the certificate of any officer or employee of the Police Department or by affidavit of any person over the age of 18 years naming the person to whom such notice was given and specifying the time, place and manner of the giving of such notice. Such notice shall contain a warning that any subsequent violation of this Article by the minor will result in full enforcement of this Article, including enforcement of parental responsibility and of applicable penalties.

§ 77.16. Violations and penalties.

A. Parents.

- (1) If, after the warning notice given pursuant to § 77-15 of a first violation by a juvenile, a parent violates § 77-12 (in connection with a second violation by the juvenile), this shall be treated as a first offense by the parent. Any parent convicted of violating § 77-13 shall pay a fine of \$200.
- (2) The parent or legal guardian having custody of a juvenile subject to this Article shall be liable for all costs incurred by the Town for providing personnel to remain in the company of a juvenile who has been detained as a curfew violator if the parent or guardian does not pick up the juvenile within one hour after receiving notice from the Town that the Town is detaining

the juvenile for a curfew violation. The amount to be paid by the parent or guardian shall be based on the hourly wage of the Town employee who is assigned to remain with the juvenile, plus the cost of benefits for that employee.

- (3) The parent or legal guardian having custody of a juvenile subject to this Article shall be liable for any fine or condition of restitution or reparation imposed by a court upon a curfew violator, provided that the curfew violator has not paid the fine or made restitution or reparation within the time ordered by the court, and further provided that the parent or legal guardian has been made a party defendant in all enforcement proceedings against the curfew violator and shall be served with all citations, summons, complaints, notices and other documents required to be served on the curfew violator defendant.

- B. False certification. Any parent convicted of knowingly providing any false authorization, information or certification, written or verbal, to the Town Police Department in violation of § 77-12 shall pay a fine of \$200.

§ 77.17. Enforceability.

The Council intends that this Article be held inapplicable in such cases, if any, where its application would be unconstitutional under the Constitution of the State of Delaware or the Constitution of the United States of America.

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Chapter 107, NOISE -

§ 107-1. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

AIRCRAFT -- Vehicles or devices that are used to travel in air above the surface of the earth and include any devices attached, suspended or towed. Also included are remote-controlled aircraft.

MOTORBOAT -- Any vessel that operates on water and is propelled by machinery, including but not limited to powerboats, motorboats and personal watercraft (PWC).

MOTOR VEHICLES -- Vehicles self-propelled or drawn by any mechanical equipment which are capable of emitting noise.

NOISE DISTURBANCE -- Any sound which endangers or injures the safety or health of humans or animals, or annoys or disturbs a reasonable person of normal sensitivities, or jeopardizes the value of property and erodes the integrity of the environment.

PASSES OF MOTOR BOATS OR AIRCRAFT IN PROXIMITY TO FENWICK ISLAND, DE (THE TOWN) -- This term means the driving or piloting of such vehicles through, over or outside of the Town or Town-patrolled beach properties, but close enough so that sounds emanating from such vehicles can be heard by people in the town or on its patrolled beaches. A pass can be from one end of the Town to the other end or a portion thereof.

PERSON -- Includes firms, companies, corporations, partnerships, associations or any organization entity as well as individuals.

TOWN-PATROLLED BEACH -- The sandy beach area east of the eastern boundary of private and public property to the ocean water and the portion of ocean normally used by swimmers. (The areas observed and patrolled by Fenwick beach guards, as provided by the State of Delaware.)

§ 107-2. General prohibitions.

The following acts are deemed to be a noise disturbance:

A. Making, creating or permitting any unreasonably loud, disturbing and unnecessary noise or making, creating or permitting any noise of such character, intensity or duration as to be detrimental to the life, health and welfare of any person or which disturbs, injures or endangers the comfort, repose, peace or safety of any individual. By way of example and not in limitation, the following shall be deemed to be unreasonably loud, disturbing and unnecessary noises:

(1) Playing any radio, phonograph, tape deck or musical instrument in such a manner or at such a volume, particularly between the hours of 12:00 a.m. and 8:00 a.m., as to annoy or disturb the quiet, comfort or repose of any person in any other dwelling unit, apartment or commercial lodging room.

(2) The blowing of any horn, whistle or signal device, except as a danger signal, for an unreasonable and unnecessary period of time.

(3) Yelling, shouting or singing at such volume as to be plainly and disturbingly audible to the human ear outside the premises.

§ 107-3. Noise suppression devices.

A. No person shall cause, suffer or allow or permit the removal, disconnection or disabling of any noise suppression device or system which has been installed on any noise source pursuant to any of the following:

(1) Pursuant to any federal or state law or regulation.

(2) As a requirement for obtaining a permit to construct, modify or install such noise source.

B. No person shall defeat the designed purpose of any noise suppression system or device by installing any part or component which does not meet the minimum designed specifications for that system or device.

C. This section does not apply to licensed motor vehicles, motorboats or aircraft used exclusively for emergency purposes.

§ 107-4. Noise disturbance levels.

A. Any motorboat or aircraft that makes a pass or passes in proximity to the Town will be in violation of this chapter if any single pass causes a **noise disturbance**.

B. Music or other sounds made by a radio, tape player, CD player or other such electronic device in or on a motor vehicle is a noise disturbance if heard by a person **25 feet** or more from the motor vehicle.

§ 107-5. Fixed external mechanical equipment.

Such equipment will be in violation of this Chapter only when not functioning in accordance with manufacturing specifications and when not in proper working order. Any complaints of the sound emanating from a fixed external mechanical equipment shall be accompanied by documentation supplied by an independent certified source.

§ 107-6. Exceptions.

Exempted from these regulations are:

A. Recreational, sports and musical activities. Noise created by the use of property for the purpose of recreational, sports or musical activities, provided that such exemption is authorized by the Town prior to the activity requested.

B. Emergencies. Noise created as a result of or related to an emergency, including the emission of sound for the purpose of alerting persons to the existence of an emergency and the emission of sound in the performance of emergency work.

C. Public celebrations. Patriotic or public celebrations as authorized by the Town or other government entity empowered to sanction such activity.

D. Productive activities; activities for residential use or for the health, safety and welfare of the community. Unavoidable noises created by activities such as personal home repairs or construction, gardening, grass cutting,

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power cleaning and aerial pesticide spraying are permitted between the hours of 8:00 a.m. and 8:00 p.m., provided that reasonable efforts are made to minimize such noise and the activities do not violate any Town ordinances or State or Federal laws.

E. Special exemptions may be granted by the Town prior to the activity requested.

§ 107-7. Violations and penalties.

A. Any person found guilty of violating any of the provisions of this chapter shall, upon conviction thereof, be subject to a fine of \$200. Each day that a person continues to violate the provisions of this chapter shall be deemed to be a separate offense.

B. In addition to the criminal penalties hereinbefore described, if any person violates any provision of this chapter and/or commits noise disturbance and/or causes or allows noise in prohibited levels to emanate from a source property under his/her ownership or control, the Town may institute an action for injunctive relief against such person to prohibit or prevent such violation.

C. In the case of a single-family residential property subject to a rental license, oral and written notice of each such violation shall be given to the recorded license holder and his/her realtor within five business days. The license may be revoked if there have been three oral and written notices during a calendar year of violation of §77-9 of this chapter. Such license revocation may be immediate, or deferred to the entire rental season for the following year, or both.

D. In addition, The Town Council may institute appropriate proceedings to restrain or enjoin further construction in violation of the chapter and/or proceedings to abate any violation, and to require the removal of the violation. In this event, the Town Council shall be entitled to collect from the offending party or parties, the Town's reasonable attorneys fees, legal costs and expenses and court costs, as a part of any judgment or award in a civil action brought to restrain or enjoin a violation. Civil remedies are in addition to and not in lieu of the penalties provided herein.